

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL16/23 IN
THE PARISH OF PAULTON**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL16/23 in the Parish of Paulton to move the public footpath away from a residential bungalow.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation for a Public Path Diversion Order to be made to divert a section of Public Footpath CL16/23 as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").

3. Financial Implications

- 3.1 The Applicant has agreed to pay the cost for processing an Order, the cost of any required notices in a local newspaper and for the works required to raise the new route to an acceptable standard for use by the public. Should an Order be made and confirmed, the Proposed Footpath will become maintainable at public expense.
- 3.2 Should an Order be made and objections received and sustained, then the Order will either be referred back to the Team Manager - Highways Maintenance and Drainage or to the Planning Committee to consider the matter in light of those objections. Should the Team Manager - Highways Maintenance and Drainage or Committee decide to continue to support the Order, then the Order will be referred to the Secretary of State for the Environment, Food and Rural Affairs for determination. Bath and North East Somerset Council ("the Authority") would be responsible for meeting the costs incurred in this process, for instance at a Public Inquiry.

4. Human Rights

- 4.1 The Human Rights Act incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the convention.
- 4.2 The Authority is required to consider the application in accordance with the principle of proportionality. The Authority will need to consider the protection of individual rights and the interests of the community at large.
- 4.3 In particular the convention rights which should be taken into account in relation to this application are Article 1 of the First Protocol (Protection of Property), Article 6 (the right to a fair hearing) and Article 8 (Right to Respect for Family and Private Life).

5. The Legal and Policy Background

- 5.1 The Authority has a discretionary power to make Public Path Orders. When considering an application for a Public Path Order, the Authority should first consider whether the proposals meet the requirements set out in the legislation (which are reproduced below). In deciding whether to make an Order or not, it is reasonable to consider both the tests for making the Order and for confirming the Order (*R. (Hargrave) v. Stroud District Council [2002]*). Even if all the tests are met, the Authority may exercise its discretion not to make the Order but it must have reasonable ground for doing so (*R. (Hockerill College) v. Hertfordshire County Council [2008]*).
- 5.2 Before making an Order under section 119 of the Highways Act 1980 (“the Act”), it must appear to the Authority that it is expedient to divert the path in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path.
- 5.3 The Authority must also be satisfied that the Order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public.
- 5.4 Before confirming an Order, the Authority or the Secretary of State must be satisfied that:
- the diversion is expedient in the interests of the person(s) stated in the Order,
 - the path will not be substantially less convenient to the public as a consequence of the diversion,
 - it is expedient to confirm the Order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation.
- 5.5 The Authority must also give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with protected characteristics.
- 5.6 In addition to the legislative tests detailed above, the proposals must also be considered in relation to the Authority’s adopted Public Path Order Policy. The Policy sets out the criteria against which the Authority will assess any Public Path Order application and stresses that the Authority will seek to take a balanced view of the proposals against all the criteria as a whole.
- 5.7 The criteria are:
- Connectivity,
 - Equalities Impact,
 - Gaps and Gates,
 - Gradients,
 - Maintenance,
 - Safety,
 - Status,
 - Width,
 - Features of Interest,

6. Background and Application

6.1 Public footpath CL16/23 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956.

6.2 The Existing Footpath runs through a residential bungalow. The applicant wishes to divert the public footpath away from her bungalow so that it runs down her driveway and then along a fenced corridor through her garden.

6.3 Description of the Existing Footpath

The proposal is for the full width of the section of Public Footpath CL16/23 commencing from grid reference ST 6631 5653 (point A on the Decision Plan) and proceeding in a generally north-northwesterly direction for approximately 68 metres to grid reference ST 6629 5659 (point B on the Decision Plan) would be stopped up. This route is referred to as the "Existing Footpath".

6.4 Description of the Proposed Footpath

The proposal is for a new route commencing from grid reference ST 6631 5653 (point A on the Decision Plan) and proceeding in a generally west-north-westerly direction for approximately 3 metres to grid reference ST 6631 5653 (Point C on the Decision Plan) and turning in a generally north-north-westerly direction for approximately 19 metres to grid reference ST 6630 5655 (Point D on the Decision Plan) and turning in a generally east-north-easterly direction for approximately 16 metres to grid reference ST 6632 5655 (Point E on the Decision Plan) and turning in a generally north-north-westerly direction for approximately 47 metres to a junction with Paulto' Hill at grid reference ST 6630 5659 (Point F on the Decision Plan). The width would be three metres between Points A and E; and two metres between Points E and F. This route is referred to as the "Proposed Footpath".

6.5 Limitations and Conditions

The Proposed Footpath will be created subject to the right of the landowner to erect and maintain a pedestrian gate at grid reference ST 6630 5659 (point F on the Decision Plan). This right will be subject to the conditions set out in the Decision Schedule.

6.6 A two-metre wide gap will be made in the fence at the southern boundary of the applicant's property at grid reference ST 6634 5646 (Point G on the Decision Plan), to re-connect the route with Public Footpath CL16/22. The field gate currently situated at grid reference ST 6631 5656 (Point H on the Decision Plan) will be removed from the line of the Proposed Footpath.

7. Consultations

7.1 The affected landowner, Paulton Parish Council, national and local user groups, the Ward Councillors and statutory consultees were all consulted about the proposed diversion for a period of four weeks ("the Consultation Period"). Additionally, site notices were erected at both ends of the proposed diversion and on the Authority's website to seek the views of members of the public.

- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected and/or that they had no objections to the proposals.
- 7.3 Paulton Parish Council stated that they had no objection to the proposals; similarly, one of the Ward Councillors stated that he had no issues with the proposal.
- 7.4 No other comments were received in relation to the proposals during the Consultation Period.

8. Officer Comments

- 8.1 It is recommended that the various tests outlined in section 5 above are considered in turn.
- 8.2 **The first test is whether it is expedient to divert the path in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** Reinstatement of the Existing Footpath would involve the demolition of the applicant's bungalow. The Proposed Footpath will divert walkers away from this bungalow to follow an alternative line down the applicant's drive and then through her garden. Consequently, it would be expedient to divert the path in the interests of the owner of the land crossed by the footpath and this test should therefore be considered to have been met.
- 8.3 **The Authority must be satisfied that the diversion does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public:** The Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point approximately 12 metres away from the end of the Existing Footpath, on the same public highway. This test is therefore considered to have been met.
- 8.4 **The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public. The overall length of the diverted route will be 17 metres longer than the length of the existing route which is considered an insignificant increase given the location of the Existing and Proposed Footpaths within the wider public rights of way network in the area and the predominant leisure use of the path. There is no change in the difficulty of walking. It therefore follows that the Proposed Footpath is not substantially less convenient to the public and this test should therefore be considered to have been met.
- 8.5 **Consideration must be given to the effect the diversion will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation:**

- 8.6 **Public enjoyment of the Path as a whole:** The Proposed Footpath runs over improved terrain and is also the route which people would naturally walk. There is no difference between the Proposed and Existing Footpaths in terms of the views enjoyed; the start point is not altered and the finish point is only altered marginally. The effect on public enjoyment is therefore improved or neutral.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The applicant's land will benefit from the Existing Footpath being moved as the public right of way will no longer pass through her bungalow. Although the Proposed Footpath will run down the applicant's drive and through her garden, the applicant will be erecting fencing to separate walkers from her recreational areas.
- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** The Proposed Footpath will remain on land owned solely by the applicant.
- 8.9 **The Authority must give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with protected characteristics:** There will be a neutral effect on farming and forestry as neither the Existing or Proposed Footpaths cross agricultural land or woodland. The effect on biodiversity will be negligible as the minimal clearance work required along the line of the Proposed Footpath is limited to seasonal ground cover. There will be no effect on members of the public with protected characteristics.
- 8.10 **The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy; namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest:**
- 8.11 The Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point approximately 12 metres away from the end of the Existing Footpath, on the same public highway. There is therefore no effect on connectivity.
- 8.12 There will be no effect on members of the public with protected characteristics.
- 8.13 A pedestrian gate will be installed where the Proposed Footpath meets Paulto' Hill at Point F on the Decision Plan (see paragraph 6.5 above).
- 8.14 There will be no change in gradient between the Existing and Proposed Footpaths.
- 8.15 It is not considered that the Proposed Footpath will require any more maintenance than the Existing Footpath.
- 8.16 The Proposed Footpath will have neutral impacts on Safety and Status.
- 8.17 The Existing Footpath is considered 1.8 metres wide. The Proposed Footpath will be three metres wide between Points A and E; and two

metres wide between Points E and F, having a positive impact on the width of the route.

8.18 The Proposed Footpath will not remove public access from any feature of interest or place of resort. There will be no impact on the quality of views.

8.19 It is considered that on balance, the proposed diversion is in accordance with the Policy.

9. Climate Change

9.1 Public rights of way are a key resource for shifting to low-carbon, sustainable means of transport. The proposal is part of the ongoing management of the network and therefore contributes towards helping to tackle the Climate Emergency.

10. Risk Management

10.1 There are no significant risks associated with diverting the footpath.

11. Conclusion

11.1 It is considered that the relevant statutory tests for making a Diversion Order under Section 119 of the Act have been met and that the proposal is in line with the Public Path Order Policy.

11.2 The Diversion Order would be in the interests of the owner of the land.

11.3 The Order should be made as proposed.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert a section of Public Footpath CL16/23 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

MP Johnson

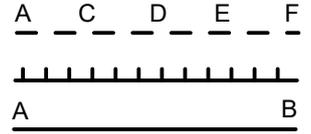
Dated: 12/02/2026

Mike Johnson – Team Manager, Highways Maintenance and Drainage

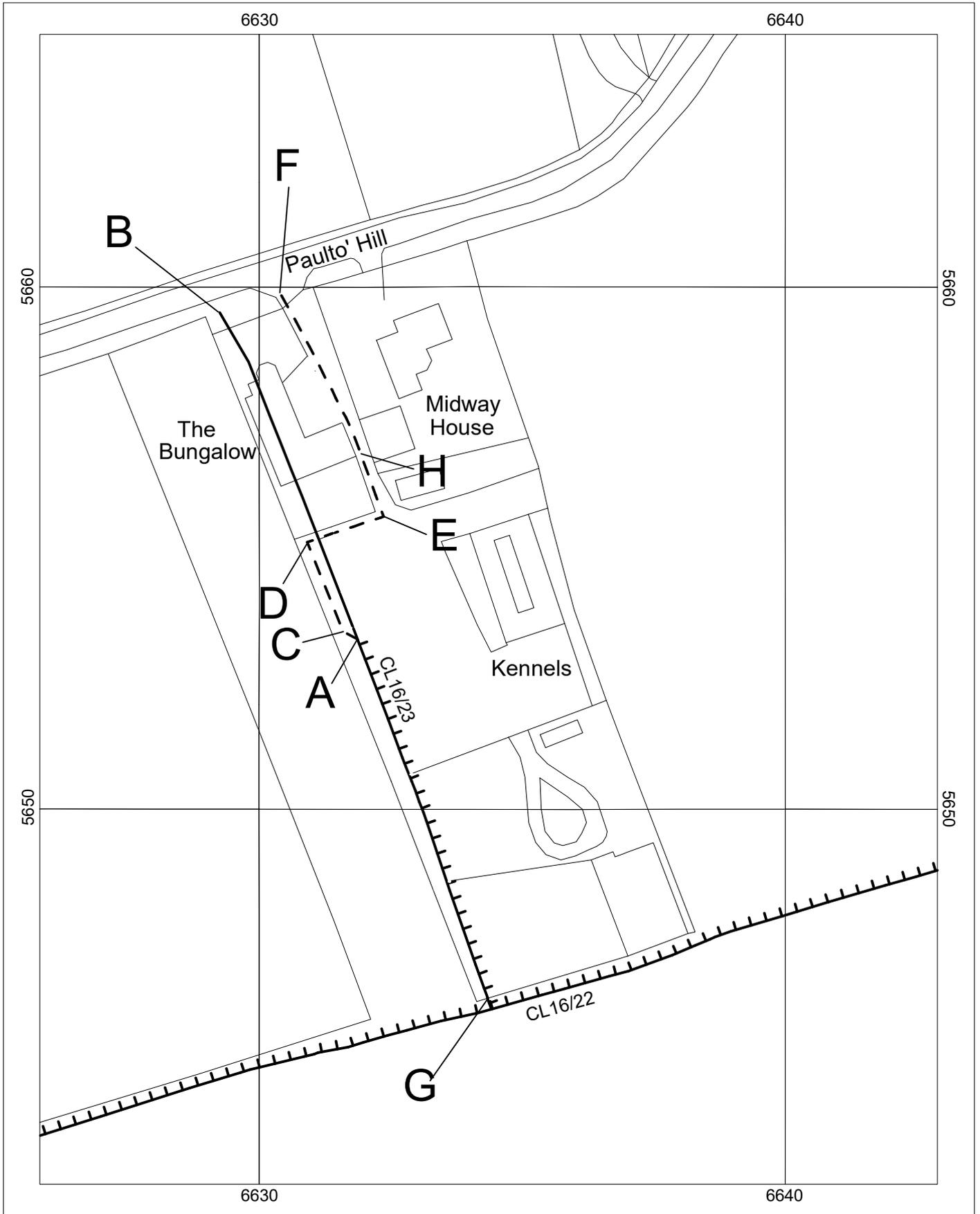
Schedule 1 Decision Plan



Public footpath to be added
 Unaffected public footpath
 Public footpath to be stopped up



Scale 1:1000



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL16/23 commencing from grid reference ST 6631 5653 (point A on the Decision Plan) and proceeding in a generally north-north-westerly direction for approximately 68 metres to a junction with Paulto' Hill at grid reference ST 6629 5659 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6631 5653 (point A on the Decision Plan) and proceeding in a generally west-north-westerly direction for approximately 3 metres to grid reference ST 6631 5653 (Point C on the Decision Plan) and turning in a generally north-north-westerly direction for approximately 19 metres to grid reference ST 6630 5655 (Point D on the Decision Plan) and turning in a generally east-north-easterly direction for approximately 16 metres to grid reference ST 6632 5655 (Point E on the Decision Plan) and turning in a generally north-north-westerly direction for approximately 47 metres to a junction with Paulto' Hill at grid reference ST 6630 5659 (Point F on the Decision Plan).

Width: 3 metres between grid reference ST 6631 5653 (Point A) and grid reference ST 6632 5655 (Point E); 2 metres between grid reference ST 6632 5655 (Point E) and grid reference ST 6630 5659 (Point F).

PART 3

LIMITATIONS AND CONDITIONS

The landowner shall have the right to erect and maintain a pedestrian gate ("the Gate") at grid reference ST 6630 5659 (point F on the Order Map). The Gate must meet the following conditions:

- The Gate should be of such a design that it is possible for a person to see through it, down the line of the public footpath;
- The Gate shall be no greater than 120 centimetres in height and no less than 90 centimetres wide;
- Any latch attached to the Gate shall be of a design approved by the Highway Authority.